

CT 7/8/03

Government should get out of the marriage business

"I very much feel that marriage is a sacrament," Senate Majority Leader Bill Frist said on a political chat show the other day. He added that the "sacrament should extend and can extend to that legal entity of a union" that has "traditionally in our Western values been defined as between a man and a woman."

Frist thus implied that the "sacrament" depends on the "legal entity"; change one, and you've changed the other. This mistaken assumption helps explain the strong feelings aroused by the prospect of gay marriage, which is so alarming to some conservatives (including Frist) that they have endorsed a constitutional amendment forbidding it.

The amendment treats marriage as the government's creation: It is possible only with the sanction of the state, which confers not only "the legal incidents thereof" but "marital status" itself.

As the Cato Institute's David Boaz has observed, "Marriage is an important institution. The modern mistake is to think that important things must be planned, sponsored, reviewed, or licensed by the government."

According to this view, two people who take marital vows in accordance with their religious tradition are not *really* married until they get permission from the government. It's a strange way of looking at things, especially for anyone who considers marriage a sacrament.

After all, people have been getting married for thousands of years, while the marriage license is a relatively recent development. A sacrament requires God's blessing, not the government's, and that's the way it should be in any society that respects religious freedom.

Suppose a religious group decides to perform weddings between people of the same sex. Since Roman Catholics, Mormons, Baptists, Muslims and Jews would not be forced to recognize such arrangements as true marriages, it's hard to see why they would have



OPINION

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Reason
magazine

grounds to complain.

Likewise if same-sex couples benefited from the "legal incidents" of marriage that gay people understandably want to enjoy: the ability to adopt children together, to approve medical treatment for each other, to inherit each other's property, and so on. Allowing two men or two women to enter into a contract that provides such benefits does not compel anyone to change their moral views about homosexuality or their religious understanding of marriage.

Equal treatment under the law does not require equal treatment by everyone. Gay rights activists obscure this crucial point and undermine their own cause when they demand laws banning private discrimination against homosexuals.

In the Supreme Court decision that revived the debate about gay marriage, the concurring opinion by Justice Sandra Day O'Connor, which concluded that a Texas sodomy ban violated the 14th Amendment's guarantee of equal protection by treating people who engaged in the same behavior differently based on their sexual orientation, was more persuasive than the majority's argument, which relied on a nebulous right to privacy.

The benefits of gay marriage will depend partly on how it is viewed by employers, insurers, landlords, neighbors and coreligionists. Although they will be subject to social and economic pressures from both directions, they should be free to form their own views and act upon them.

If different visions of marriage are to co-exist peacefully, the government must get out of the marriage approval business. Instead of dictating a one-size-fits-all contract (the terms of which can be retroactively changed by legislators, as happened with the "no fault" divorce revolution), the government simply should enforce the voluntary agreements of people who want to build a life together.

